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Current Topics.

The Long Vacation Cancelled.

BY the time these words appear in print readers will have learnt of the decision of the council of judges at a meeting held in the House of Lords last Monday, that the Supreme Court of Judicature shall sit in August and September. According to a statement issued after the meeting it was decided with the unanimous approval of all present, and with the concurrence of the Lord Chancellor, that a modification of the ordinary arrangements for the Long Vacation was desirable for the present year. The Supreme Court is therefore to sit during August and September, not merely to dispose of urgent business but also in order that all parties who so desire may have their cases tried when they are ready. Several members of the judiciary and many of those who practise in the courts have planned to do active war work during those months, but, the statement intimates, it will be possible to secure that a sufficient rota of judges shall be available in the Court of Appeal and in each division of the High Court. It has accordingly been recommended that the Long Vacation this year shall be cancelled by Order in Council, and that consequential amendments of Rules of Court shall be made. Where circumstances arising from the war justify postponements of trials or extension of time, applications for this purpose can be made.

Emergency Powers (Defence) Bill.

THE power conferred on the Crown by the Emergency Powers (Defence) Act, 1939, s. 1, to make Defence Regulations for the defence of the realm, etc., does not extend to "the making of provision for the trial by courts-martial of persons not being persons subject to the Naval Discipline Act, to military law or to the Air Force Act" (*ib.*, subs. (5)). The Emergency Powers (Defence) (No. 2) Bill, which was introduced in the House of Commons on 10th July, recites that by reason of the development of hostilities since the date of the passing of the former Act it has become expedient to extend the aforesaid powers in order to secure that provision for the trial of such persons by special courts may be made where necessary. It is, therefore, proposed to enact that the powers conferred on the Crown by the Act of 1939 to make Defence Regulations shall include "power to make provision for securing that, where the military situation is such as to require the institution of special courts for the trial of offenders, persons, whether or not subject to the Naval Discipline Act, to military law, or to the Air Force Act, may, in such circumstances as may be prescribed by the regulations, be tried by such courts as may be so provided." A new paragraph is to be inserted in s. 1 (2) of the Act of 1939 which, without prejudice to the generality of the powers of the preceding subsection, sets out various purposes for which Defence Regulations may be made. Under this para. (*aa*) regulations may make provision for the apprehension and punishment of offenders and for their trial "by such courts and in accordance with such procedure as may be provided for . . . , and for the proceedings of such courts being subject to no review or to such review as may be so provided for." The Bill provides for the repeal of the words "for the apprehension trial and punishment of persons offending against the regulations and" in para. (*a*) of s. 1 (2) of the Act of 1939. It was originally proposed also to repeal the above cited words in subs. (5), but it is probable that, in accordance with an amendment, those words will stand. Other amendments since tabled propose to delete references to "extending further" the powers of the former Act and to substitute a phrase indicative of an intention to remove doubts as to the extent of those powers.

The Special Courts.

WHEN the measure was before the House of Commons on Second Reading the Home Secretary stated that the special courts would differ from ordinary courts in two important respects: there would be no jury and no appeal. They would be of civilian character, the ordinary rules of evidence would apply, and offenders could be legally represented. It is proposed that suitable men qualified to exercise high judicial office should be selected by the Lord Chancellor to act as presidents, and that two justices of the peace with knowledge of local circumstances should be associated with the president, whose decision, however, either as regards conviction or sentence, they would not be in a position to override. He said that he was perfectly willing to give an undertaking that words would be introduced in committee to make it quite clear that the kind of court that could be set up was a civilian court (an amendment has since been tabled to this effect), and sympathised with the suggestion that it might be desirable to insert words to define more closely the nature of the emergency which would be held by the Government to justify the use of the special judicial procedure, though that would not be so easy. The Attorney-General urged that it was untrue to suggest that the courts would create new offences. The substantive law would be found in the Defence Regulations. The only regulations made under powers conferred by the Bill would be procedure regulations. The military authorities did not want to deal with civilian offences in courts-martial. They desired more speedy methods and did not want serving officers taken away from their military duties. The Bill passed the Second Reading stage by 124 votes to sixteen.

The Solicitors Bill.

A NUMBER of amendments were introduced into the Solicitors Bill during the committee stage in the House of Lords on 10th July. Many were of a drafting character and need not be set out here. Others demand brief reference. Clause 2, which provided for the reduction of stamp duty payable on practising certificates, was dropped in accordance with the intimation previously given. Under cl. 3 (i) every solicitor is to be required to deliver to the Registrar an accountant's certificate. Sub-clause (2) as originally drafted provided that the preceding sub-clause should not apply to a solicitor who satisfied the Council of The Law Society that the delivery of an accountant's certificate was "impracticable." The word

" unnecessary," as better meeting the circumstances, has now been substituted. Clause 17, which contains provisions relating to clerks found parties to solicitors' misconduct, referred in its original form only to cases in which clerks employed by solicitors had been found guilty of offences in the course of proceedings before the Disciplinary Committee when The Law Society was empowered to provide that other solicitors should not employ them without its consent. This clause has now been amended so as to apply also to cases where the offending party has been convicted of " larceny, embezzlement, fraudulent conversion, or any other criminal offence in respect of any money or property belonging to or held or controlled by the solicitor by whom he is or was employed, or any client of such solicitor." A new clause has been inserted to deal with the problem of undercutting. It declares, for the removal of doubt, that s. 1 of the Solicitors Act, 1933, shall be deemed to empower and always to have empowered the Council of The Law Society, subject to the approval of the Master of the Rolls, to make rules " fixing or providing for the fixing, either generally or for particular areas, of scales of minimum charges to be made by solicitors not exceeding in respect of contentious business the charges prescribed by Rules of Court and in respect of non-contentious business the charges prescribed by orders under s. 56 of the principal Act and to make provision for securing the observance and preventing the evasion of such scales : Provided that any such rules shall not apply to any business which a solicitor, solely from charitable motives, undertakes to conduct free of charge, or to any business specially excepted by such rules." A definition has been inserted of " trust " and " trustee " whereby those expressions extend to implied and constructive trusts and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative. Where the context admits, " trustee " includes a personal representative. Amendments to the First Schedule provide for a more extensive examination of documents and accounts other than those of which the Council can now claim inspection and delivery, and enable the council in the event of having documents in its possession to find out to whom they belong.

Defence Regulations : Companies.

THE attention of readers should be drawn to a Defence Regulation which has recently been made on behalf of the Board of Trade with reference to liquidators on war service. The regulation provides that the functions of a liquidator of a company, appointed under the Companies Act, 1929, may at any time while he is engaged in war service be exercised by any person authorised by him by power of attorney, provided the following requirements are complied with : (1) the consent of the Board of Trade in writing must be given in each case ; (2) there must be filed with the Registrar of Companies—(i) the instrument creating the power of attorney authorising the deputy or a copy verified by affidavit sworn by the liquidator or the deputy, and (ii) the document signifying the consent of the Board of Trade ; (3) where the liquidator was appointed in England, the deputy must have given security to the satisfaction of the Board of Trade ; and where the liquidator was appointed by the court in Scotland, the deputy must have made application to the court on the question of security and either have given security in accordance with the court's determination or the court must have dispensed with the giving of security. Under another Defence Regulation, which is designed to save paper and clerical labour, it is unnecessary for the annual return of a company to be contained in the register of members, as hitherto required by s. 110 of the Companies Act, 1929, but the return will still have to be forwarded to the Registrar of Companies as provided by that section.

Defence Regulations : Evacuation Areas.

THE Defence (Evacuated Areas) Regulations, 1940, contain several provisions of interest to practitioners. The Minister of Home Security is empowered to declare any part of a defence area to be an evacuation area for the purpose of the regulations, and in that event the following provisions have effect in regard to property unoccupied at the date of such declaration or property subsequently becoming unoccupied. No rent or rates ; no sum secured or charged on such premises ; no sum payable on account of a redemption annuity within the meaning of the Tithe Act, 1936, or in lieu of tithe ; no sum payable periodically in respect of any right enjoyed in connection with the premises ; and no sum payable under any contract for the supply of water, gas, electricity, or telephone services are recoverable during the evacuation period. Premises requisitioned by any Government department are to be regarded as unoccupied, and no premises will be regarded as occupied by reason only of the presence of furniture or other goods. No person will be held to remain in occupation of any premises or to live or carry on business in an evacuation area merely because he intends, when circumstances permit, to return or resume the business. No sum will be recoverable during the evacuation period under a contract for hire or hire-purchase of goods by one who, in the case of goods used solely for the purpose of a business, has ceased to carry on the business in such area, or, in any other case, has ceased to live there. The foregoing reliefs do not apply to rent or money payable under a contract entered into after the date of the regulations, or to payments for the hire or hire-purchase of goods unless the goods or some part of them were in the area at the beginning of the evacuation period and have not been removed from the area before the date on which the sum was due. The court may remove or modify the reliefs if it is satisfied that a person entitled to possession of unoccupied premises has lived in the area at any time since the beginning of the evacuation period, and if the person liable, or anyone else with his consent, has been enjoying a substantial benefit from the premises or goods. The court is also empowered to grant an injunction restraining the exercise of any such remedy as is mentioned in the Courts (Emergency Powers) Act, 1939, where an order has been made for the payment of money due under a contract, or for recovery of possession of land in default of payment of rent against anyone so affected by the evacuation of an area or by the provisions of the regulations that he cannot pay immediately. In the case of a mortgage the court is empowered to grant an injunction restraining the institution of proceedings for foreclosure, or sale in lieu of foreclosure, or for recovery of possession, and to make an order staying any such proceedings previously instituted.

Courts (Emergency Powers) Act : Rescission of Sale.

The Times of 10th July mentioned a case which came before BENNETT, J., on motion on the previous day, in which the plaintiffs asked for an order that an agreement, dated 31st December, 1938, for the sale of certain property be rescinded, that the deposit paid thereunder be forfeited to the plaintiffs, and that the defendants be ordered to deliver up to them vacant possession of the property, and to pay them their taxed costs of the action and of the motion. The learned judge intimated that the remedy for which the plaintiffs were asking was not anything in the nature of enforcing any judgment or order within s. 1 (1) of the Courts (Emergency Powers) Act, 1939. The case, in his judgment, did not fall within that subsection, and the plaintiffs were entitled to an order in the terms of the notice of motion.

Recent Decisions.

IN *O'Grady* v. *M. Saper, Ltd.* (*The Times*, 4th July), the Court of Appeal (MACKINNON and LUXMOORE, L.JJ., and TUCKER, J.) reversed the decision of a county court judge and held that an employee was not entitled to wages while absent during sickness, inasmuch as a term to the effect that no wages should be paid during such period was to be implied in the contract of employment. *Marrison* v. *Bell* [1939] 2 K.B. 187, held not applicable.

In *Barking Rating Authority* v. *Central Electricity Board* (mentioned in *The Times* of 6th July) the Court of Appeal (SCOTT, CLAUSON and GODDARD, L.JJ.) upheld the decision of a Divisional Court which had proceeded on the footing that the profits basis was, in the absence of special circumstances (not present in this case), the only method of assessing for rating purposes premises of a public utility undertaking whose operations extended over areas beyond that of one individual parish.

In *Cullen* v. *Jackson ; Garry* v. *Same* (*The Times*, 11th July), CROOM-JOHNSON, J., awarded administrators £700 and £600 in respect of loss of expectation of life of their respective daughters aged eleven and eight, who were knocked down by a motor car driven by the defendant and died as the result of injuries sustained. His lordship discussed the position in light of the judgment of the Court of Appeal in *Mills* v. *Stanway Coaches, Ltd.*, 56 T.L.R. 790, concerning the relevance of the amount of damages assessed by that court in *Rose* v. *Ford* [1936] 1 K.B. 90 if (as the House of Lords held ([1937] A.C. 826), contrary to the court's opinion) damages were recoverable under this head.

In *Re Vrint, deceased ; Vrint* v. *Swain* (*The Times*, 13th July) BENNETT, J., dismissed an application under the Inheritance (Family Provision) Act, 1938, holding that " reasonable provision " for a testator's widow could not be made out of an estate, the net value of which was £138 14s. 10d. The Act was not one for the purpose of providing legacies.

In *Re St. Dunstans* (*The Times*, 16th July) SIMONDS, J., sanctioned an alteration in the memorandum of association of St. Dunstans in order to include the treatment of all eye cases arising out of the war, whether of soldiers, sailors, airmen or civilians.

Criminal Law and Practice.

Defence (Administration of Justice) Regulations, 1940.

IT is important that the legal profession should at once become acquainted with the provisions of the Defence (Administration of Justice) Regulations, S.R. & O., 1940, No. 1028. One of the objects of the regulations is to provide for the sittings of certain courts chiefly concerned with criminal business in the event of an invasion.

Assizes and Quarter Sessions.

In the case of assizes the judge or commissioner of assize for the circuit is the appropriate authority. If he thinks it expedient having regard to hostile operations in Great Britain, he may give directions for the holding of particular assizes at any other place on or off the circuit or for the discontinuance of assizes and transference of trials to other assizes or to a quarter sessions court where it has jurisdiction. The Lord Chancellor may make an order containing a list of persons who may in turn give directions in case the judge, or a person previously mentioned on the list, is unable to act. For the purpose of this provision (reg. 1) the following are deemed to be separate circuits: (i) each part of the South Eastern Circuit; (ii) the assizes for the Birmingham Division of the County of Warwick; (iii) the assizes for the County and City of Chester; (iv) the assizes for the County of Glamorgan.

The Secretary of State is given power (if he thinks it expedient having regard to hostile operations in Great Britain) to make similar directions by order with regard to quarter sessions, their time and place of sitting, whether within or outside the area, and the transfer of jurisdiction from one quarter sessions court to another (para. 2 (1)). The chairman or recorder of a court of quarter sessions is given power in such a case to make directions during a sitting or at any time within seven days before the date on which the court has been appointed to sit. The directions may provide for the adjournment or postponement to such place and date as may be fixed by order or, notwithstanding such order, for the continuance of the sittings. The deputy chairman, the clerk of the peace and the deputy clerk of the peace are each in turn given powers to act in place of the chairman, if he or any of them is unable to act. The mayor of a borough may act in place of the recorder. This regulation, dealing with quarter sessions (reg. 2) has effect in substitution for so much of s. 5 (2) of the Administration of Justice (Emergency Provisions) Act, 1939, as relates to courts of quarter sessions. It will be remembered that that subsection gave the Secretary of State powers to make similar orders with regard to courts of quarter sessions and courts of summary jurisdiction.

There is also provision for the Secretary of State to make an order, to have force for a limited period, that all persons charged with indictable offences before justices in areas specified in the order shall be committed to specified assizes or quarter sessions. Justices also may, subject to any order by the Secretary of State, commit persons charged with indictable offences to any other assize or quarter sessions than those to which but for the regulation they would have been committed (reg. 3).

There are consequential provisions which apply when assizes or quarter sessions sit at places or times ordered or directed by virtue of the regulations, or where trials take place or are continued before another court as directed by virtue of the regulations. These provisions are contained in the First Schedule to the Regulations and relate to recognizances, warrants, jurors, execution of judgments of death, transmission of indictments, depositions and other relevant documents, and other necessary incidental matters.

Justices.

Similar powers are given to the Secretary of State to make orders giving directions for courts of summary jurisdiction to be held at times and places specified in the order, for the transfer of the functions of justices of one county or area to those of another county or area, or for the transfer of the whole or part of the jurisdiction of one petty sessional divisional court to another. This regulation also takes the place, during its operation of the relevant part of s. 5 (2) of the Administration of Justice (Emergency Provisions) Act, 1939, which contains a similar provision. This regulation (6) does not contain the usual qualification: "if he thinks it expedient so to do having regard to any hostile operations in Great Britain."

Subject to such orders, justices have power to exercise their functions in counties or areas adjoining their own if they think it expedient having regard to hostile operations in Great Britain. Petty sessional divisional courts may also, if the justices think fit, be held in an adjoining county or area (reg. 8).

There are consequential provisions with regard to summonses, recognisances, warrants and petty sessional court houses in reg. 8.

Examining justices taking preliminary hearings of indictable offences must not discontinue them if it appears to them that it is expedient to continue, having regard to hostile operations in Great Britain. This is notwithstanding their power in cases of hardship to discontinue proceedings in a county in which the accused was apprehended under s. 11 (1) (*a*) of the Criminal Justice Act, 1925. There is no appeal against the justices' refusal to discontinue if they certify that it is due to hostile operations.

There is also a provision permitting courts of summary jurisdiction to deal summarily with indictable offences on any days on which they are sitting as petty sessional courts, in spite of s. 20 (8) of the Summary Jurisdiction Act, 1879, which provides that days must be publicly appointed for the summary trial of indictable offences (reg. 9). A justices' warrant under s. 31 (2) of the Criminal Justice Act, 1925, may direct the offender to be brought before the court for which the justice acts, if such justice thinks it expedient having regard to hostile operations in Great Britain. The maximum period of remand under s. 21 of the Indictable Offences Act, 1848, or under s. 24 of the Summary Jurisdiction Act, 1848, is extended to twenty-one clear days unless a defendant is admitted to bail and both he and the prosecutor consent to a longer period. Remands under the latter section may nevertheless be either in custody or on bail to the next practicable sitting of the court. The Metropolitan Police Courts Act, 1839, s. 36, which empowers a police magistrate to remand an accused person on bail for such period as he thinks reasonable, is not affected. The above provisions are substituted for the similar provision in s. 9 of the Administration of Justice (Emergency Provisions) Act, 1939, dealing with remands. Any area for which a court of summary jurisdiction is constituted, divisions of the metropolitan police court area, the City of London and any area for which a stipendiary magistrate is appointed, are deemed to be petty sessional divisions for the purpose of these provisions.

Jurors.

No person indicted for treason or felony has any right of peremptory challenge of jurors (reg. 13 (1)). Previously, peremptory challenges, i.e., challenges without reason assigned, were allowed to the maximum number of thirty-five in many cases of high treason, and twenty in other cases of high treason and murder and other felonies (7 & 8 Wm. 3, Ch. 3, s. 2; 6 Geo. IV, Ch. 50, s. 29). The judge, chairman, recorder or other person trying the case determines questions as to challenges (reg. 13 (2)). Regulation 14 provides for the supplying of any deficiency of jurors from among persons present or who can be found. Provision is also made for the continuance of criminal trials or inquests when a member of the jury dies or becomes incapable of acting through illness, so long as the jury is not reduced below ten members where the case started before twelve jurors, and below five in any other case (reg. 15).

Evidence.

Statutory declarations may be used as evidence by prosecutors at the hearing of indictable offences before examining justices, but not where such offences are dealt with summarily. If the person charged is committed for trial the prosecutor must within two days of the committal, provide the accused free of charge with a copy of the declaration; the person making the declaration must be bound over, conditionally or otherwise, to attend the trial (by service of a notice on the person making the declaration); and the declaration must be signed by one of the examining justices and transmitted to the court of trial as if it were a deposition (reg. 16 and 2nd Sched.).

Finally, there is provision for the giving of a deposition in evidence at the trial, where the witness whose deposition it is is unable to attend either by reason of being engaged in the naval, military or air force service of His Majesty or on other work of urgent public importance, or by reason of hostile operations in the United Kingdom. The deposition must, of course, have been taken in the presence of the accused and (except in the case of a witness on behalf of the accused) the accused must have had full opportunity of cross-examining the witness. It must be signed by one of the examining justices. A certificate, signed by a secretary or assistant secretary to the Admiralty, Army Council or Air Council, certifying that a person is unable to attend a trial by reason of his being engaged in the naval, military or air force service of His Majesty, is conclusive evidence of the facts so certified. Similarly, a certificate signed by one of the examining justices or by the clerk to such justices certifying that a deposition was taken in the presence of the accused, and that there was full opportunity for cross-examination, is also conclusive proof of the facts so certified. Other modes of proof are not excluded.

Further Developments in the Control of Finance.

As the war progresses and new situations arise it becomes necessary to vary and amend the mechanism used for the control of finance. As previously pointed out, the object of this control is to protect the sterling currency system, and thus restrictions on the indiscriminate transmission of money from this country to various parts of the world are inevitabie. A method, very common in the business world, for such a transmission of money is the use of bills of exchange and the like, the use of which is now regulated by reg. 3 of the Defence (Finance) Regulations, 1939 (S.R. & O., No. 1620), and the subsequent amending orders. Regulation 3 (1) (*b*) prohibits the drawing, issuing or negotiating of a bill of exchange or promissory note or acknowledging a debt so that a right (either actual or contingent) to receive a payment in the United Kingdom or the Isle of Man is created or transferred as consideration for a payment, or for the receipt of property outside the United Kingdom or the Isle of Man. Regulation 3 (1) (*ab*) prohibits similar transactions creating or transferring such rights in favour of a person who is himself resident outside the United Kingdom or the Isle of Man. An exemption to this prohibition has been made by the Currency and Securities Restriction Exemptions (No. 1) Order, 1940 (S.R. & O., No. 710), which allows the transaction to take place when the person in question is resident in the sterling area. Fuller details of the above have been previously described (84 SOL. J. 328, 352), and it is hoped that the foregoing outline will be sufficient to enable the new legislation to be seen in true perspective.

Instead of making further exemptions in the manner of S.R. & O., 1940, No. 710, a new procedure appears to have been adopted. By an amending order (S.R. & O., 1940, No. 892), a new reg. 3C has been added to the Defence (Finance) Regulations themselves, which lays down how payments may be made, by the methods in question, to particular countries. Paragraph (1) of this regulation states that save as provided in this regulation no person shall draw, issue or negotiate any bill of exchange or promissory note or acknowledge any debt so that a right (either actual or contingent) to receive a payment in the United Kingdom or the Isle of Man is created or transferred in favour of a person who is resident in any territory specified in an order to be made by the Treasury. Paragraph (2) describes how these payments, for which permission of the Treasury is required, are to be made. A payment shall be made in sterling into a special account, of which there are two types—

(*a*) if the territory specified in the order is declared to be a territory with respect to which an agreement is in force for the regulation of payments between the United Kingdom and that territory, the special account is a Bank of England one for the purposes of that agreement;

(*b*) if the territory is not declared to be such a territory, then the special account is the Treasury account.

If the payment is made into this Treasury special account then the receipt by the Treasury of the money shall be a good discharge to the person owing the money; and if the debt is not in sterling, the extent of the discharge by the payment in sterling shall be calculated using such rate of exchange as the Treasury shall determine. The way in which the payment out of moneys, from this Treasury special account, is to be made is described in para. 4. If no special agreement is entered into between the United Kingdom and the territory in question, the money shall be used in whole or in part and in such order and at such time as the Treasury may decide in paying off the debts owed to persons in the United Kingdom from persons in the territory in question. Thus, without allowing sterling to leave the country, debts between persons in the two countries are in a sense set off against one another.

In brief, for the purposes of these transactions—the use of bills of exchange and the like—the world is divided into three spheres—

(i) the countries to be specified in orders made under reg. 3C, with which the transactions are to be carried out in the above described manner;

(ii) the sterling area, in which by virtue of reg. 3 and the Currency and Securities Restriction Exemptions (No. 1) Order, the transactions may be freely carried out;

(iii) the rest of the world, with which, by virtue of reg. 3 (1) except with express permission of the Treasury, the transactions are prohibited.

A number of orders under reg. 3C (1) and (2) have already been issued specifying certain countries. The Defence (Finance) (Restriction of Payments) (No. 1) Order, 1940 (S.R. & O., No. 895), which came into force on the 10th June, 1940, deals with Sweden. This country was declared to be a specified territory coming under reg. 3C (2) (*a*), i.e., a territory with which an agreement is in force for the regulation of payments. The payments must therefore be made into the Bank of England special account. The Defence (Finance) (Restriction of Payments) (No. 2) Order, 1940 (S.R. & O., No. 943), came into force on the 12th June, 1940, and declared the Argentine Republic to be a territory specified under reg. 3C (2) (*a*). The next order—the Defence (Finance) (Restriction of Payments) (No. 3) 1940 (S.R. & O., No. 964)—is a little more complicated. It came into force on the 17th June, 1940, and applies to Roumania, which is also declared to be a territory coming under reg. 3C (2) (*a*) with the result that payments must be made into the Bank of England special account. The complication arises owing to the existence of previous clearing office arrangements with Roumania. The payment of any debts to the Anglo-Roumanian Clearing Office under the Clearing Office (Roumania) Order, 1936 (S. R. & O., No. 427), as amended by the Clearing Office (Roumania) Amendment Order, 1940 (S. R. & O., No. 963), are to be unaffected by the new arrangements.

Payments for Exported Goods.

For some time past a control has been exercised over the export of goods to foreign countries as a means of obtaining appropriate foreign currency. This matter is dealt with by reg. 5B of the Defence (Finance) Regulations, which was first introduced on the 25th March, 1940, by an amending order (S.R. & O., 1940, No. 291). This order was a somewhat makeshift one, and enacted that if certain classes of goods, such as whisky, fur skins, tin and rubber, were exported to certain places, payment should be made in belgas, guilders, Swiss francs or U.S. dollars, or in sterling purchased since the 3rd September, 1939, from an authorised dealer and paid for in those currencies.

This regulation 5B has now been amended and made much more comprehensive by the previously mentioned amending order (S.R. & O., 1940, No. 892). Paragraph (1) of the regulation now enacts that, subject to exceptions granted by order of the Treasury, no person shall, except with permission granted by or on behalf of the Treasury, export goods of any class or description (not merely certain classes of goods) to any place in any territory to which this regulation is made to apply, unless certain conditions are satisfied. These conditions are that the Commissioners of Customs and Excise shall be satisfied that either—

(*a*) the payment for the goods has been made to a person resident in the United Kingdom in a manner to be prescribed for the territory in question; or

(*b*) the payment is to be so made within six months or within such longer period as the Treasury may allow of the date of export;

and in addition that the amount of payment represents the full value of the goods, less any deductions the Treasury may allow.

A series of orders have been issued under the authority of reg. 5B applying this regulation to certain territories. The first of these is the Defence (Finance) (Export of Goods) (No. 1) Order, 1940, (S.R. & O., No. 894), and sets out in the schedule territories to which the regulation is henceforth to apply, and also prescribes the manner in which the payments are to be made as to which it is necessary that the Commissioners of Customs and Excise be satisfied. This order, which came into force on the 10th June, 1940, applies to the United States of America and the payments are to be made either in dollars or in sterling funds purchased after the 3rd September, 1940, from an authorised dealer by making a payment to him in dollars. The order further applies to Switzerland and payments are again to be made either in Swiss francs or in sterling funds purchased as above from an authorised dealer. Finally, the order applies to Sweden and the payments here are to be made either in Swedish kroner or in sterling funds obtained from the Swedish special account kept for the purposes of reg. 3C and previously mentioned. A second order—the Defence (Finance) (Export of Goods) (No. 2) Order, 1940 (S.R. & O., No. 944)—was made a few days later and came into force on the 14th June, 1940. It applied reg. 5B to the territories of the Argentine Republic. As to the mode of payments required, its provisions are similar to those of the previous order. The payments are to be made in sterling funds obtained from the Argentine Republic special account kept for the purposes of reg. 3C, and not in the currency itself of the Argentine Republic. The third and latest of these orders is the Defence (Finance) (Export of Goods) (No. 3) Order, 1940 (S.R. & O., No. 965), which came into operation on the 17th June, 1940. It makes Roumania one of the territories to which reg. 5B applies. The conditions of payment are again adapted to meet the requirements of the particular case. Payment may be made either in sterling funds obtained from the Roumanian special account set up

for the purposes of reg. 3c and previously mentioned, or in sterling funds obtained from an account recognised by the Anglo-Roumanian Clearing Office as being for the purposes of the trading agreement made between Roumania and the United Kingdom.

Penalties.

The penalties for infringing any of the Defence (Finance) Regulations and orders made thereunder are contained, by reference, in reg. 9, which states that the general powers of enforcement and penalties contained in Pt. V of the Defence (General) Regulations and there set out in detail, are to apply. Regulation 92 of this Pt. V states that offences against the regulations may be dealt with summarily, when the maximum penalty is imprisonment for a term of three months, a fine of £100, or both, or the offence may be dealt with on indictment, when the maximum penalty is imprisonment for a term of two years, a fine of £500, or both. These general rules are to apply unless a special penalty is contained in the regulations for some particular offence. Such a special penalty was introduced by an amending order (S.R. & O., 1940, No. 929), and is now to be found in the Defence (Finance) Regulations as reg. 9 (3). It deals with offences concerning, *inter alia*, bills of exchange, promissory notes, debts and payments for goods, and allows a maximum fine to be imposed upon the offender, which is either that set out in reg. 92 of the Defence (General) Regulations or a fine equal to three times the value of the bill of exchange, promissory note, etc., whichever is the greater.

A Conveyancer's Diary.

Lost Wills: Precautions.

A CORRESPONDENT has raised a topical point of some general interest: Are any, and if so, what, precautions practicable to secure that effect shall be given to a will in the event of it being destroyed by enemy action? He suggests that it might be as well to execute wills in duplicate and to deposit the duplicates separately.

A lost will, like any other lost written instrument, may be proved by secondary evidence. This proposition was doubted by Lord Penzance in *Wharram* v. *Wharram*, 3 Sw. & Tr. 301, but was decisively upheld by Hannen, P., and the Court of Appeal in *Sugden* v. *St. Leonards* (1876), 1 P.D. 154, and cannot now be questioned. *Sugden* v. *St. Leonards* is the *locus classicus* on the whole subject, and the hundred pages of the report are well worth reading. The great Lord St. Leonards, the Lord Chancellor, lived to be ninety-three years of age, and had amassed real and personal estate worth over £300,000 (see p. 245), a fortune substantial even for those days of the law's prosperity. He died in January, 1875, leaving behind him a small black box containing eight duly executed codicils. There were two keys to this box, one of which he kept himself; the other lived in an escritoire which could be opened by no less than five keys that were about the house (including the butler's key to a wine cupboard). Apparently everyone about him knew that the box contained his testamentary papers. He had undoubtedly made a will in January, 1870, to which the codicils referred. The will was kept in the box, and was seen there as late as August, 1873. In March, 1874, Lord St. Leonards took to his bed and remained there till he died. During those last ten months, and for two months in the autumn of 1873 when he was also ill in bed, his daughter Charlotte had the box in her custody. So the interval of time during which Lord St. Leonards could have destroyed the will, *animo revocandi*, was very short. All the learned judges concerned came to the conclusion that he did no such thing, a thing unlikely in itself (seeing that the codicils were found) and quite against all the other evidence. But what became of it no one suggested, beyond that it must have been abstracted clandestinely. And, so far as I know, this mystery has never been solved. Now, the will was holograph, and there was no copy. It was also extremely complicated. But fortunately the testator's daughter Charlotte, who had been the companion of his declining years, knew its contents by heart, he having at least once read it over to her and having often shown it to her and discussed it with her. She was a party interested in establishing the will, but there could be no doubt of her integrity. Moreover, she had acted as her father's secretary in preparing the later editions of his celebrated works on the law of property, and was therefore probably better able than any other lay person who has ever lived to understand what it was all about. The upshot was that the court pronounced for the lost will as detailed in her oral evidence, which bore out a statement which she had written down so soon as the loss was discovered. In applying the doctrine of *Sugden* v. *St. Leonards* one has to bear in mind that seldom will the oral evidence be quite as cogent. The witness was undoubtedly honest, therefore her evidence was the more weighty for her interest in the subject-matter; she was almost the pupil of a very famous lawyer; she acted promptly and wrote down her recollection so soon as she realised that the will was missing, apparently without even reading the codicils, which might have refreshed her memory.

In another reported case, *In the Estate of Phibbs* [1917] P. 93, the will was lost in 1916, after the death, in transit to an executor in Dublin, where its arrival at the post office coincided with a civil commotion during which the post office caught fire. Here too, the lady who was interested acted promptly and wrote out an epitome, to which she later swore. But she too was a particularly good witness as she had been for fifteen years clerk to a solicitor in Lincoln's Inn.

Now, both those cases were ones in which there was no available completed draft, or copy, or even a draft at all. They were therefore cases of peculiar difficulty in themselves, but the grant was obtained by peculiarly strong evidence. I think it is right to say that the chances of establishing a lost will in the absence of a draft or copy are not brilliant at the best of times, and the situation can only be saved by a good witness. Such a person need not be legally qualified, but must have had good opportunity to know the contents of the will. He can improve his quality at the trial by having written down his recollection of the contents of the will, before a reliable witness, at the earliest moment.

If there is a draft or copy matters are easier, especially if the draft is a completed one. If all persons whom the will would prejudice consent, the registrar could deal with the case. In many cases, however, the court would think a motion desirable, though if there is no contest an action is avoidable (see "Tristram and Coote's Probate Practice," p. 213 *et seq.*).

It seems that the best course will be that the actual will and the completed draft should be deposited in different places, and if the size of the estate warrants the expense there should also be copies deposited in various places. These copies should be marked as checked, and there should be several witnesses of the checking. In an important case the best thing would be to have photographs of the completed will instead of copies. It would be worth considering whether more use might not be made of the little known provision of the Judicature Act, 1925, s. 172, under which a living person may deposit his will at Somerset House. As the court pointed out in *Sugden* v. *St. Leonards*, a great deal of expense would have been saved if Lord St. Leonards had deposited his will under the predecessor of s. 172. I have not investigated the matter, but I should hope that deposited wills are kept in a good vault; the solicitor is relieved from the responsibility for custody which is onerous in these days.

As has appeared, I am of opinion that the wisest way to deal with the question raised by my correspondent is to ensure that sufficient evidence is available for proceeding smoothly under the "lost will" rules. I do not favour duplicate wills, because they are entangled with various ancient rules. First, both duplicates are equally testamentary documents. Hence, both have to be brought in, though only one is proved (see *Killican* v. *Parker*, 1 Lee 662). Further, if either duplicate is missing after having been in the custody of the testator, the presumption arises that he destroyed it *animo revocandi*. If this presumption cannot be rebutted, the will cannot be admitted to probate, even though the other duplicate be forthcoming. It is better therefore that the second and subsequent copies should be copies merely and not extra originals.

Landlord and Tenant Notebook.

Illuminated Advertisement Signs and the Lighting Restrictions Orders.

THE question whether and, if so, when, agreements for the use of premises for advertising purposes are tenancy agreements was referred to some years ago in this "Notebook," namely, in an article entitled "Leave or Licence" in vol. 75, p. 185, and again in an article entitled "Bill-Posting Stations" at p. 567 of the same volume. The answer to the question may be of vital importance when, e.g., breach of covenant against alienation, or decontrol due to business user is in issue. In the recent case of *Williams* v. *Mercer* (1940), 3 All E.R. 292, nothing turned upon a question of this sort, the decision depending on the construction of a proviso which might have been inserted in either a licence or a lease; but as the instrument did provide for the use of part of premises for an advertising sign, and the proviso was in the nature of an option to determine a tenancy, it may be usefully discussed here.

The claim was for rent due under an agreement running for five years from 1st November, 1937, which gave the defendant the right to erect an illuminated advertising sign of specified dimensions on the plaintiff's premises. Those advising the tenant or licensee had clearly not failed in their duty to exercise imagination, for one proviso dealt with suspension of rent in the event of a local authority ordering the lessor to rebuild the premises and consequent interference with the sign; another, on the effect of which the result of the dispute depended, contained a stipulation that if a local authority or any other duly empowered authority should order the sign to be taken down, removed, altered or amended, the lessee was to have the right to determine the agreement by one month's notice.

Clearly, skilled advisers had had in mind the possibility of action under building legislation, town planning legislation, and advertisement control legislation; and if the agreement had been made a year later than it was, it may well be that they would have anticipated the emergency legislation and the black-out. As things were, the sign ceased to function as an illuminated sign when, on 1st September, 1939, the first Lighting Restrictions Order enjoined: "No person shall, for the purpose of advertisement or display, cause or permit any sky-sign, facia or advertisement to be illuminated or any light to be displayed outside or at the entrance to any premises . . ." On 15th December the defendant gave what purported to be a month's notice under the second proviso, and subsequently relied on this in answer to an action for a quarter's rent.

The Court of Appeal expressed unanimous sympathy with the defendant when upholding the judgment of the county court in favour of the plaintiff. The contention that the defendant had been ordered to "alter" or "amend" the sign could not be accepted.

It is, of course, possible that if those responsible for the Order had decided to anticipate negligence by directing, say, the removal of bulbs or neon wire, the condition precedent to the power to determine might have been considered to have been satisfied. On the other hand, it seems fair to say that the draftsman of the agreement was thinking, not of black-outs, but of bye-laws which might be made under the Advertisements Regulation Acts, 1907 and 1925.

There have been cases in which the effect of a change in the law made during the term have been considered. In *Jones* v. *Bone* (1870), L.R. 9 Eq. 674, the question was whether a grocer, bound by a covenant made in 1854 not to carry on "the trade of a retailer of wine," had infringed that covenant by taking advantage of the Wine Licences and Refreshment Houses Act, 1860, and obtaining and using a licence authorising him to sell wine in bottles of not less than one pint. (Before then, the minimum was a dozen bottles or two gallons.) "Now at the time when this covenant was entered into," said James, V-C., in his judgment, "there was a trade perfectly well known as the trade of an innkeeper or public-house keeper, and 'the business of a seller by retail of wine, beer or spirituous liquors' was, in the then state of the law, an expression which would naturally apply to the case of a gin palace bar, or the like, and which might not have been sufficiently covered by the words 'business of a tavern-keeper, innkeeper, or publican' . . . It was against that trade that this covenant was directed, not against the trade of a wine merchant. . . . Since then, under the new excise laws, a perfectly new line of business has sprung up . . . which is really a modification of the old wine merchants' business. I think this is not the sort of thing which was intended to be provided against." It may be mentioned that the plaintiff was a competitor of the defendant and was not, as has sometimes been the case, interested in either amenities or abstinence.

Then the common law took a turn in *Wadham* v. *Postmaster-General* (1871), L.R. 6 Q.B. 644, an action for ejectment based on forfeiture for breach of covenant "to use the premises as a post-office for the parish and district of Clifton and not for any other purpose." The lease, for a term of 1,000 years, was granted in 1852. Soon after the passing of the Dog Licences Act, 1867, and the Customs and Inland Revenue Act, 1869, the Commissioners of Inland Revenue, under whose management the duties and licences provided for by both statutes were placed, arranged for the issue of dog licences, armorial bearing licences, carriage licences, etc., by post-offices, commencing on 1st January, 1870. Cockburn, C.J., dismissing the action, held that on *ejusdem generis* principles these activities were "not so foreign to the general functions of the post-office as that it could be said to be the transfer of the business of one department to another," and Mellor, J., concurring, observed that the object of the covenant had been to induce the Postmaster-General to take premises for the purpose of having performed all functions which he was authorised, by Act of Parliament, to have performed by post-office clerks.

These authorities suggest that, apart from the consideration that the meaning of the proviso in *Williams* v. *Mercer* was plain from the language, consideration of its object would hardly have availed the tenant; and if hardship is to be avoided, the Council might examine the possibility of including in its Orders a provision similar to that contained in the Factories Act, 1937, s. 146, enabling a court to modify agreements as it considers "just and equitable."

Our County Court Letter.

Garnishee Orders.

In four recent cases at Shrewsbury County Court (*Onions and Others* v. *Super Homes, Ltd.*; *M.W.M. Maisonettes, Ltd., garnishees*) applications were made on behalf of the plaintiffs, who had recovered judgment for arrears of wages against the defendants. The latter had been employed by M.W.M. Maisonettes, Ltd., to do the work on certain houses, in respect of which a sum of about £2,000 was due to the defendants. The indebtedness was not disputed, but, owing to delay in completion of the houses, it was impossible to ascertain the exact financial position. No undertaking could therefore be given to set aside a sum sufficient to satisfy the judgments. His Honour Judge Samuel, K.C., made garnishee orders as asked. It is to be noted that obtaining a garnishee order is not "proceeding to execution or otherwise to the enforcement of a judgment or order" (see *Keats* v. *Conolly* [1915] W.N. 174). The subject of "attachment of debts" is now regulated by the Courts (Emergency Powers) Consolidation Rules, 1940, No. 12, as regards the High Court. The subject of "garnishee proceedings" is governed by the County Court (Emergency Powers) (Consolidation) Rules, 1940, No. 13.

The Remuneration of Architects.

In a recent case at Matlock County Court (*Beddington* v. *Cooper*) the claim was for £10 10s. for money paid by the plaintiff for the defendant at his request. The plaintiff was a builder, and his case was that in April, 1937, he received instructions to prepare plans for two houses, to be built upon the defendant's land. The plaintiff accordingly paid £10 10s. to an architect to prepare the plans, which were passed by the local authority and by the town planning authority. The county council, however, required the construction of a service road, and, as the defendant would not agree, the plans were rejected. No news of the abandonment of the project reached the plaintiff until late in 1938, when he heard that fresh plans had been passed and another builder had commenced the work. Although the plaintiff had previously erected similar houses, a fresh set of plans were prepared on the defendant's behalf. The case for the defendant was that the plans were merely copies of plans of houses previously erected by the plaintiff. Moreover the plaintiff had not completed the contract, and when the defendant had afterwards built houses on his land the architect's fees amounted to £6. His Honour Deputy Judge Robinson held that there was no evidence that the plaintiff was authorised to employ an architect on the defendant's behalf. The plaintiff had gone to considerable trouble in helping the defendant, but this was in the hope of securing a building contract, and not in pursuance of any agreement. Judgment was given for the defendant, with costs.

Decisions under the Workmen's Compensation Acts.

Accident to Timber-feller.

In *Miles* v. *Boys & Boden*, at Craven Arms County Court, the applicant was aged fifty-eight, and had been employed as a timber-feller, at £1 14s. 2d. a week. On the 25th October, 1938, the applicant strained his back while levering up a piece of timber with a crowbar. Compensation at £1 1s. a week was paid until February, 1939. In November, 1939, the applicant did light work, viz., felling Scotch firs, but he had to give up anything involving stooping and lifting. The medical evidence was that the applicant had a rupture of the erecta spiny muscle, and there were adhesions on the side of the injury. The applicant was therefore unable to do labouring work. The respondents' case was that they were prepared to employ the applicant at breaking up bark with a light axe for the grinding mill, for tanning purposes. The wages would be £2 a week. His Honour Judge Samuel, K.C., held that the applicant had been totally incapacitated from the 18th February to the 26th July, 1939, and was entitled to £1 1s. a week for that period, viz., £24 3s. There had been partial incapacity from the 27th July to the 30th November, 1939, and compensation was due at 8s. 7d. a week for that period, viz., £8 4s. 6d. Total incapacity had recurred from the 27th February, 1940, to the date of the award, and the compensation due was £4 4s. An award of 8s. 7d. for continuing incapacity was made, with costs.

To-day and Yesterday.

Legal Calendar.

15 July.—On the 15th July, 1846, a sensational inquest opened at the "George the Fourth" Inn on Hounslow Heath. A trooper of the 7th Hussars had died in hospital after receiving a hundred and fifty strokes of the "cat" for striking a sergeant with a poker. The investigation was carried through in spite of the opposition of the military authorities and, after successive adjournments, the full brutality of the episode was exposed. In their verdict the jury expressed "their horror and disgust at the existence of any law among the statutes or regulations of this realm which permits the revolting punishment of flogging to be inflicted upon British soldiers." The agitation thus set afoot powerfully influenced the future.

16 July.—On the 16th July, 1685, Gilbert Elliot was condemned to death in his absence by the Court of Justiciary in Edinburgh.

17 July.—On the 17th July, 1735, at the Northampton Assizes, "Mary Fassan was condemned to be burnt for poisoning her husband, having been married but six weeks, by putting white mercury into sugar sops which she gave him. He was seventeen years of age and heir to above £1,000, she twenty years of age and had been a servant. Her criminal affection for a young man occasioned this accident."

18 July.—On the 18th July, 1610, Sir Thomas Cæsar died. He was buried in the Church of Great St. Helen's in Bishopsgate, near the home of his father, an eminent Italian doctor, who stood high in the estimation of Queen Elizabeth. Two of the sons of this gentleman embraced the legal profession. Julius, the eldest, became Master of the Rolls. Thomas was appointed cursitor baron of the Exchequer in May, 1610, only two months before his death. Both were members of the Inner Temple.

19 July.—On the 19th July, 1717, the Lincoln's Inn Benchers decided that "this Council being informed that The Right Honourable the Master of the Rolls intends to pull down the house belonging to the Rolls in order to rebuild the same, it is ordered that the Masters of the Bench now present, or as many of them as please, do attend His Honour, and inform him that, if he please, he may make use of the Hall belonging to this Society, till he shall think proper to make use of the Hall belonging to his own house" (i.e., as a court). The Master of the Rolls was then Sir Joseph Jekyll. It was seven years before the new Rolls House was completed. It was pulled down in 1895 to clear the site for the Record Office.

20 July.—On the 20th July, 1847, Mary Anne Milner, a good-looking and lady-like young woman, stood in the dock at the Lincoln Assizes charged on three separate indictments with the murder of her mother-in-law, her sister-in-law and her niece by the administration of arsenic. The evidence was wholly circumstantial and the prisoner was acquitted of the murder of the older woman. Next she was tried on the indictment relating to her sister-in-law's death which had occurred immediately after eating some pancakes prepared by her and had been accompanied by the most agonising vomiting. She was found guilty and Mr. Baron Rolfe sentenced her to death. She hanged herself in prison a few hours before the time fixed for her execution. The motive for her crime seems to have been to obtain money from burial societies.

21 July.—On the 21st July, 1753, eight persons were condemned to death at the Old Bailey. Two of them John Stockdale, aged seventeen, and Christopher Johnson, aged twenty, had robbed a postman of his watch on the road from Edmonton while he was courteously holding a gate open for them. As he did not give it up quickly enough they had shot him dead. While sentence was being passed on him Stockdale was in tears and violently beat his head and breast.

THE WEEK'S PERSONALITY.

Gilbert Elliot was thirty-four when he was condemned to death in 1685 for his share in the Earl of Argyll's unsuccessful rising. He had acted as clerk to the council which the rebels had previously held at Rotterdam; he had collected funds among the churches of Geneva and Germany, and when the fighting had begun he had taken up arms in Scotland. Afterwards he had escaped by flight and been condemned to death in his absence. Two years later he obtained the favour of a royal pardon and applied for admission to the Faculty of Advocates. He failed at first to pass the requisite examination, but in 1688 he succeeded. He did not allow any scruples of gratitude to prevent him from intriguing against King James to bring over William of Orange, and he duly reaped his reward. In 1692 he was knighted and appointed Clerk to the Privy Council. In 1700 he became a baronet and in 1705 he attained the unique climax, for one who had been condemned to death, of being made a Judge of the Court of Session with the title of Lord Minto. He was also a member of the Court of Justiciary. He died in 1718.

THE CHANCELLOR'S PENSION.

Somebody recently saw fit to ask the Chancellor of the Exchequer, among the Parliamentary flourishes of question time, whether in the interests of economy he proposed to repeal 2 & 3 Will. IV, c. 3. Until the dawn of that salutary time when those who serve the nation in public business (whether as M.P.'s or in some more responsible capacity) do so gratuitously and without any thought of present or future reward there seems little reason why the great office of the Lord Chancellor should be shorn of any more of its emoluments. The Act in question, which secures to the occupant of the Woolsack an annuity of £5,000 after he vacates it, was itself considered to effect a grave diminution in the desirability of that seat. Till then he had revelled in patronage, and the sinecures at his disposal had enabled him to provide handsomely for his descendants by means of those which he did not retain for himself. In all they were worth about £24,000 a year, and their duties could very conveniently be handed over to a deputy.

FAIR COMPENSATION.

The resounding litany of the Chancellor's sinecures makes curious reading now. There were the Clerkship of the Hanaper, the Clerkship of the Crown in Chancery, the Clerkship of the Patents, the Clerkship of the Custodian of Lunatics and Idiots and the Clerkship of the Presentations and Faculties. Then there were the Patentee of the Subpœna Office, the Patentee for the Execution of the Laws and Statutes concerning Bankrupts, the Chaff-Wax (whose duty it was to heat the wax when the Great Seal was in use), the Registrar of Affidavits, and many more. When all these glittering prizes were snatched from him in 1833 it is small wonder that even Parliament found it (to quote the Act) "just and equitable that more ample provision should be made for the Lord High Chancellor or Lord Keeper of the Great Seal on his retirement from office." Ex-Chancellors have in fact pulled their intellectual weight with great regularity in helping to determine House of Lords appeals, and save at the time when the late Lord Birkenhead turned his face towards the attractions of the City of London, few have grudged them what they receive.

Obituary.

MR. A. G. ECCLESTON.

Mr. Albert George Eccleston, solicitor and senior partner in the firm of Henry Lee, Bygott & Eccleston, solicitors, of Whitchurch and Wem, Shropshire, died on Tuesday, 9th July, at the age of sixty-three. He was admitted a solicitor in 1907 and was associated with the firm for over fifty years. He was Clerk to the Whitchurch Justices for seventeen years and held the office of Clerk to Wem Rural District Council for twenty-eight years.

MR. S. W. CLARKE.

Mr. Sidney Wrangel Clarke, barrister-at-law, died on Friday, 12th July. Mr. Clarke was called to the Bar by the Middle Temple in 1892.

On Active Service.

FLYING OFFICER H. S. SMITH.

Flying Officer Harold Souden Smith, R.A.F., has been killed on active service. He was admitted a solicitor in 1931, and practised at Lewisham, S.E.13.

SECOND LIEUTENANT F. H. K. RYLAND.

Second Lieutenant Frank Henry Koncelik Ryland, of the Royal Berkshire Regt., has been killed in action. He was admitted a solicitor in 1921, and practised at Slough. He also held the appointment of Clerk to the Magistrates.

GUNNER G. G. MACKAY, R.A.

Gunner George Graham Mackay, R.A., was killed in action during May, 1940. He was admitted a solicitor in 1937, and was associated with the firm of Ince, Roscoe, Wilson & Glover, solicitors, 10-11, Lime Street, London, E.C.3.

Notes of Cases.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Stewart *v.* Hancock.

Viscount Caldecote, L.C., Viscount Sankey, Lord Thankerton, Lord Russell of Killowen and Lord Roche. 5th April, 1940.

Negligence—Stationary car in road at night without lights—Plaintiff injured by colliding with—Liability.

Appeal from a judgment of the Court of Appeal of New Zealand.

The appellant, on the night of the 8th December, 1935, was proceeding on his motor cycle along a main road from Hamilton to Auckland on his proper side in the direction of Auckland. The defendant's motor car was stationary on the same side of the road facing in the same direction and showing no rear or other light. Nearer to the appellant as he approached was a motor car belonging to one, Singer, also stationary in the roadway, but showing lights, which car had been asked to stop by the defendant. The appellant on his motor cycle approached and passed by Singer's car, reducing his speed from about 35 miles per hour to about 25 miles per hour, and, when he had passed out of the beams of its lights, saw the respondent's car, braked and swerved, but came into collision with that car and sustained injuries. The trial judge directed the jury that, if they found that the plaintiff had the last opportunity of avoiding the accident and negligently failed to avail himself of it, or if he was negligent as alleged and that negligence was a proximate cause of the accident, there should be a verdict for the defendant. He also told the jury that, if they found that negligence of the defendant was the sole proximate cause of the accident, there should be a verdict for the plaintiff. The jury returned a verdict for the appellant for £1,259 damages, judgment being entered accordingly. On a motion to set aside the judgment, the judge held that on the facts it was impossible to say that as a matter of law the appellant was guilty of contributory negligence, and that there was evidence on which the jury could reasonably find that negligence in the appellant was not established. The Court of Appeal (Ostler and Johnston, JJ.; Smith, J., dissenting) held that judgment should have been entered for the respondent on the ground that it was conclusively proved that the proximate cause of the accident was the appellant's own negligence, and that the verdict of the jury was so unreasonable as to be perverse. The plaintiff now appealed. (*Cur. adv. vult.*)

Lord Roche, delivering the judgment of the Board, said that their lordships were of opinion that the correct view and conclusion was that expressed by the trial judge and in the dissenting judgment of Smith, J. Ostler, J., in dealing with *Tidy* v. *Battman* [1934] 1 K.B. 319 (approved by the Court of Appeal), read a passage from the judgment of Macnaghten, J., and said that he agreed with it, and that it might be paraphrased by a statement that negligence was a question of fact, not of law; that each case must depend upon its own facts; and that there was no rule of law which in every case disqualified a motorist from recovering damages where he had run into a stationary unlighted object. Their lordships agreed with that admirable summary of the law applicable to the case. His lordship, having examined all the facts of the case in detail, explaining the situation created by the fact that Singer's car, by its lights, to some extent dazzled the appellant as he approached, said that their lordships held a clear opinion that there was ample evidence before the jury that the appellant, while dealing with a situation of some difficulty created by the respondent himself, and while keeping a good look-out, properly attended for a sufficient time to an element of possible danger, namely, Singer's car, to account for the fact that he did not see the respondent's unlit car quite in time to avert the consequences of its naturally unexpected presence. The appeal should be allowed and the judgment for £1,259 8s. 2d. restored.

Counsel: *Sellers*, K.C., and *H. G. Rowley* (for *A. Ross*, on war service); *Beyfus*, K.C., and *Edmunds*.

Solicitors: *Wray, Smith & Halford; Wedlake, Letts & Birds.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

HOUSE OF LORDS.

Cameron *v.* Prendergast (Inspector of Taxes).

Viscount Caldecote, L.C., Lord Maugham, Lord Russell of Killowen, Lord Wright and Lord Romer. 13th March, 1940.

Revenue—Income tax—Company director—Intention to resign—Continuation as director at request of board—Receipt from company of large sum in consideration of not resigning—Liability to tax.

Appeal from a decision of the Court of Appeal (Finlay and Luxmoore, L.JJ.; Sir Wilfrid Greene, M.R., dissenting) (83 Sol. J. 152).

The appellant was a director of a private company carrying on a prosperous building business to the development of which he had largely contributed. In 1934, he intimated to his co-directors that he intended to retire at the end of the year. Service of a written notice of resignation under art. 107 (*d*) of the company's articles of association would have determined his directorship without the necessity of any acceptance by the company, and he could only have been replaced on the board by the company in general meeting. On the 17th December, 1934, pursuant to a resolution of the board, the company wrote asking him "in the interests of the company not to serve such notice and to say that in consideration of your acceding to this request, the company will, within 21 days or by such instalments as you will accept, pay you the sum of £45,000." The appellant did not resign, and on the 31st December, 1934, a deed was executed referring to the letter and agreeing that the company should pay the respondent on the 31st day of December, 1934, the sum of £35,000, and on the 31st day of March, 1935, the sum of £10,000." These sums were received by the appellant, who also agreed to accept a considerably reduced salary of £400 a year, devoting less time to the company's business. Laurence, J., and the Court of Appeal (Finlay and Luxmoore, L.JJ.; Sir Wilfrid Greene, M.R., dissenting) held that the sums in question were liable to tax. (*Cur. adv. vult.*)

Viscount Caldecote, L.C., said that it was contended for the appellant that the only consideration for the £45,000 was the act of the appellant in acceding to the request of the company not to serve the notice of resignation. But for the approval given by the Master of the Rolls to that submission, it might have been thought only to require to be stated to be rejected. There was no difference between a promise not to resign and a promise to continue to serve as director. Admittedly the appellant gave no promise in words to continue to serve for any period, any more than the board by their resolution named a term of service. It was fair to assume that, in the course of a long connection of the appellant with the company, his fellow-directors had learned that they could trust him. It was unnecessary to decide whether or not it was open to him, having received the sum, to resign immediately afterwards. The appellant's colleagues on the board no doubt knew their man, and were confident that, if he received the money which they were prepared to pay him, they would receive good value. To call the continuance of his office "a by-product of the undertaking not to deliver notice of resignation" seems to me, with all respect to the Master of the Rolls, to be a misdescription of the contract. The continuance of the appellant in his office was the essence of the bargain. *Dewhurst* v. *Hunter* (1932), 146 L.T. 510, with its very special facts, was distinguishable. The appeal must be dismissed.

The other noble lords concurred.

Counsel: *Needham*, K.C., and *R. A. Willes; The Attorney-General* (Sir Donald Somervell, K.C.) and *R. P. Hills.*

Solicitors: *Edell & Co.; The Solicitor of Inland Revenue.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

HIGH COURT—CHANCERY DIVISION.

In re Waldron; *In re* Waldron's Settlement Trusts; Waldron *v.* Errington-Wales.

Bennett, J. 12th June, 1940.

Power of appointment—Shares in two companies settled—Appointor by will makes gift of shares in the two companies—No reference to power—Appointor herself owns shares in one company—Whether power exercised.

By a settlement, dated the 28th November, 1906, W settled 700 shares in the Cullen Co., Ltd., on his seven children, of whom R, a daughter, was one. R took a life interest in her share of the trust premises; after her death her share was to be held on trust for her children or child as she should by deed or will appoint. By a second settlement, dated the 14th December, 1911, W settled 21,000 shares of £1 each in the Patagonian Sheep Farming Co. (1908) Ltd., upon similar trusts for the benefit of his same children. W, by his will, directed that the share of R in his residuary estate should be held upon trust to pay the income thereof to her for life with similar powers of appointment by will in favour of her children. The settlor died in 1913. R, by her will, dated the 9th December, 1937, *inter alia* provided as follows: "I bequeath all my shares in the Patagonia Sheep Farming Company and my shares in the Cullen Sheep Farming Company to my trustees upon trust to pay the annual income to arise from one half part thereof to my daughter D during her life . . ." then followed trusts of the shares in favour of D's husband, with a power of appointment in favour of her children with ultimate trusts in default of children in favour of another daughter of M and her children. R, in a subsequent clause of her will, after referring to the power of appointment given to her by the will of the settlor, exercised that power. R died in 1939. At the date of her death she was the absolute owner of 2,778 shares in the Patogonian Sheep Farming Co. (1908) Ltd. She owned no shares in the Cullen Co. Ltd. The trustees of the settlements of 1906 and 1911 took out two summonses to determine whether R had by her will exercised the power of appointment conferred by these settlements.

Bennett, J., said that the difficulty here resulted from the fact that R owned personally shares in the Patagonian Sheep Farming Co. (1908) Ltd., which were not subject to the trusts of the 1911 settlement. On the question here was a conflict of authority. On the one hand there was the decision in *In re Wait; Workman* v. *Pelgrave* (1885), 30 Ch. D. 617; on the other, there was the decision in *Napier* v. *Napier*, 1 Simon 28; and *Lewis* v. *Lewellyn* (1823), Turn & R. 104. R had exercised the power of appointment conferred by the 1906 settlement in respect of the Cullen Co. Ltd. shares. As, however, R held shares, which answered to the description of "my shares in the Patagonia Sheep Farming Company," he was bound, however, he thought, by the decision in *Napier* v. *Napier*, *supra*, to hold that she had not exercised the power of appointment conferred by the 1911 settlement.

COUNSEL: *A. C. Nesbitt*, for the trustees; *Jopling* (for *C. M. White*, on war service); *J. Bowyer*; *Alcock*.
SOLICITORS: *Neve, Beck & Crane*; *Field, Roscoe & Co.*
[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Henderson; Henderson *v.* Henderson.

Bennett, J. 14th June, 1940.

Trustee—Trustee unwilling to retire—Jurisdiction of court to appoint new trustee—Trustee Act, 1925 (15 *Geo.* 5, *c.* 19), *s.* 41.

The testator, who died in 1932, after appointing his widow and his niece to be executors and trustees thereof, gave his residuary estate upon trust to pay the income thereof to the widow for life, and after her death, as to the capital and income, on trust for the niece absolutely. The widow and niece proved the will and codicil thereto. In 1938 the widow took out an originating summons asking, *inter alia*, that the Public Trustee might be appointed trustee of the will and codicil in place of herself. She stated in her evidence that differences had arisen between herself and the niece in the administration of the trust. The niece agreed to this appointment, and in November, 1939, Simonds, J., made an order directing the niece to concur with the widow in appointing the Public Trustee to be a trustee of the will in place of the widow. After some correspondence, the widow's solicitors wrote that the widow was not willing to retire or appoint the Public Trustee. The niece in March, 1940, took out this summons, to which the widow was defendant, asking that, pursuant to s. 41 (1) of the Trustee Act, 1925, the Public Trustee might be appointed to be a trustee of the will and codicil in place of the widow and to act jointly with the niece. The widow opposed the application and stated in her evidence that she had originally sought the appointment of the Public Trustee in the mistaken belief that this would secure the independent administration of the trust.

BENNETT, J., said there was no doubt but that on the language of s. 41, subs. (1), the court had jurisdiction to displace a trustee and appoint a new trustee in his place. The real question in each case was whether this was expedient. Where there was a dispute as to some fact, the court should not exercise the jurisdiction against a trustee who wished to continue to act. Here there was no dispute of fact, and it was expedient to appoint the Public Trustee, and he should be appointed accordingly.

COUNSEL: *Turnbull*, for the niece; *Beebee*, for the widow.
SOLICITORS: *Baileys, Shaw & Gillett*; *C. R. Enever.*
[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

HIGH COURT—KING'S BENCH DIVISION.

Old's Discount Co., Ltd. *v.* Krett and Another.

Stable, J. 20th April, 1940.

Hire-purchase—Furniture delivered by dealer to customer—Agreement by plaintiff company to finance transaction—Property in furniture to pass to company—Hire-purchase payments in arrear—Possession resumed by dealer—Purchased by defendants in good faith—No consent by plaintiffs—Right to recover goods.

Action claiming the return of furniture and damages for its detention.

The plaintiff company carried on the business of financing hire-purchase transactions. By a written agreement, dated the 23rd June, 1939, between the plaintiffs and one Goldstein, a furniture dealer, the company agreed to finance hire-purchase transactions whereby Goldstein should find acceptable customers to take on terms of hire-purchase furniture which the plaintiffs would purchase from him and would authorise him to let to the customers. Before entering, on behalf of the plaintiffs, into a hire-purchase agreement with a customer, Goldstein was to execute a "sales-letter" addressed to them, the effect of which was to be a binding sale of the furniture to the plaintiffs and to pass the absolute property in it to them. Goldstein might thereupon sign the hire-purchase agreement on behalf of the company and deliver the goods to the customer. Goldstein further undertook to guarantee the customer's periodical payments and to accept bills of exchange as security for them. Finally, it was provided that if either a customer exercised his option to cancel the agreement and return the goods, or the plaintiffs, or Goldstein as their agent, resumed possession of them, the goods were to remain the plaintiffs' property and at their disposal, and the plaintiffs' liability to pay Goldstein any outstanding balance of purchase-price was to remain unaffected. On the 13th July, 1939, Goldstein, as the plaintiffs' agent, entered into a hire-purchase agreement with one, Frankenstein, in respect of certain furniture. A sales-letter was duly executed in the plaintiffs' favour, and they became the purchasers. In November Goldstein resumed possession of the goods, Frankenstein having fallen into arrear with his payments. In December, 1939, the plaintiffs brought a customer to inspect the furniture, and on the 19th January they instructed Goldstein to deliver the furniture to that customer. The goods were not delivered in accordance with that request, the plaintiffs not yet having paid Goldstein the original purchase price in full, and on the 1st February Goldstein sold it to the defendant Krett, who, the plaintiffs admitted, bought it in good faith and without notice of the plaintiffs' claim. The plaintiffs having brought this action claiming from the defendants the goods and damages for their detention, the defendants relied by way of defence on s. 25 (1) of the Sale of Goods Act, 1893, which provides: "Where a person having sold goods . . . is in possession of the goods . . . the delivery . . . by that person . . . of the goods . . . under any sale . . . to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery were expressly authorised by the owner of the goods to make the same."

STABLE, J., said that when, owing to Frankenstein's being unsatisfactory in his payments, Goldstein resumed possession of the furniture, he did so with the plaintiffs' consent and as their agent, they sending a representative to see that he had received it back. As from Goldstein's receiving the plaintiffs' letter instructing him to deliver the furniture to the new customer whom they had introduced, he had no right to hold the furniture. It was impossible to decide in the defendants' favour under s. 25 of the Act of 1893. Taken in their widest sense, the words of the section were wide enough to protect the defendants, and he (his lordship) regretted having to decide in favour of a finance company who for over two months had left furniture in a dealer's possession without taking any steps to see that it was not exposed for sale. It was to be regretted that the section did not protect a perfectly innocent member of the public who had entered a shop and bought the goods. The case was, however, in his opinion, covered by *Staffs Motor Guarantee, Ltd.* v. *British Wagon Co., Ltd.* [1934] 2 K.B. 305, although a distinguishing feature was that there the vendor's possession was derived from a transaction never contemplated at the time when the original contract of sale was made. Here, from the documents, in the course of dealing, there arose an implied mandate to Goldstein to look after his principals' interest and recover the furniture if a purchaser fell badly into arrear with his payments; so that the resumption of possession by Goldstein was not an independent matter as in the case above cited. The distinction was, however, one without a difference. Here, when Goldstein sold the goods to Frankenstein they passed completely from his possession. The possession which he resumed was simply under a mandate to act as the plaintiffs' agent and bailee. For the defendants reliance was placed on the fact that the plaintiffs had not yet paid the dealer the full purchase-price of the furniture. The obligation to pay it in full had not yet matured. It was, however, plain that Goldstein could not assert against the plaintiffs any unpaid vendor's lien merely because of the unpaid balance. The lien disappeared as soon as the furniture was delivered to Frankenstein, who then hired it from the plaintiffs. Goldstein's possession after Frankenstein's default had been derived from a relationship wholly distinct from that of buyer and seller. There must be judgment for the plaintiffs.

COUNSEL: *Sylvester Gates*; *Raeburn.*
SOLICITORS: *Sidney Pearlman*; *W. Timothy Donovan.*
[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Wodehouse *v.* Levy and Others; St. Marylebone Borough Council, third parties.

Cassels, J. 29th April, 1940.

Local government—Street lighting—Black-out—Lighting restrictions—Local authority's duty to light street refuges not repealed—Metropolis Management Act, 1855 (18 & 19 *Vict.*, *c.* 120), *ss.* 108, 130—*Lighting (Restrictions) Order*, 1939 (*S.R. & O.*, 1939, *No.* 1098), *paras.* 1, 4.

Action for damages for personal injuries.

The plaintiff, an infant, was on the 1st September, 1939, being driven by the second defendant, Price, along a street in the Borough of St. Marylebone, London, in a taxicab belonging to the first defendant, Levy, when he was injured through its colliding with an unilluminated bollard at the end of a refuge in the middle of the road. The plaintiff brought this action by his mother as next friend, claiming damages for negligence against the first two defendants and against St. Marylebone Borough Council for negligence and breach of duty. The first two defendants also brought in the council as third parties. The Lighting (Restrictions) Order, 1939, came into force on the 16th September. Paragraph 1 laid down the general rule that no person should show any light during the hours of darkness. By para. 4 that general prohibition was made inapplicable to, among other things, "(*d*) lamps indicating obstructions upon or near the carriageway . . . provided . . . of candle-power not exceeding 1·0 and . . . screened" in a prescribed manner. In the afternoon of the day in question the defendant council received instructions that black-out conditions were to be introduced all over the country. This imposed a great burden on local authorities, and the judge found as a fact that the refuge in question was an unlighted obstruction in the road on the night of the 1st September. By s. 108 of the Metropolis Management Act, 1855, the defendant council were empowered to erect, *inter alia*, such a refuge as that in question. By s. 130 they were placed under a duty to cause their streets to be well and sufficiently lighted.

CASSELS, J., said that in *Baldock* v. *Westminster Corporation* (1918), 120 L.T. 470, at p. 471, Bankes, L.J., had said that the Act of 1855 imposed on the local authority no specific duty to light the refuge there in question, but that the general duty to cause streets to be sufficiently lighted included a duty to provide sufficient light to indicate the position of any obstruction which they placed in it. His lordship referred to *Carpenter* v. *Finsbury Borough Council* [1920] 2 K.B. 195; 64 SOL. J. 425; *Polkinghorn* v. *Lambeth Borough Council* (1938), 82 SOL. J. 94; *Great Central Railway Co.* v. *Hewlett* [1916] 2 A.C. 511; 60 SOL. J. 678, which, he said, were distinguishable; and to *Sheppard* v. *Glossop Corporation* [1921] 3 K.B. 132; 65 SOL. J. 472, and said that

it was contended for the defendant council that the Order of 1939 had repealed their duty to light streets under s. 130 of the Act of 1855. He (his lordship) could not accept that view. The prohibition of lights in para. 1 was expressly stated in para. 4 not to be applicable to lamps indicating obstructions if those lights complied with certain requirements. The Order of 1939 had certainly modified the duty, expressed in the statute, to cause the streets to be "well and sufficiently lighted"; but it had not abolished the duty to light obstructions in the streets, which was founded on both statute and common law as the cases showed. The present restrictions did not relieve metropolitan local authorities from lighting obstructions such as refuges in the streets. Where there was an obstruction in the street, and diminished or no lighting, the obstruction must be indicated by light which did not contravene para. 4 (*d*) of the Order; and, where the obstruction was in the nature of an illuminated bollard on a refuge, it should have a light conforming to para. 4 (*c*). The argument was inadmissible that this was a case of non-feasance for which the authority were not liable. That principle was usually, and probably strictly, applicable to cases of failure to repair a highway. The present action did not relate to non-repair of a highway. Failure to exercise powers given by statute created no liability; incompetent exercise of those powers was another matter: see *per* Slesser, L.J., in *Kent* v. *East Suffolk Rivers Catchment Board* [1940] 1 K.B. 319; 83 SOL. J. 907. The council were therefore liable. The first two defendants were also liable for the negligent driving of the latter. There would be judgment for the plaintiff against all the defendants, the damages to be borne as to three-fourths by the council.

COUNSEL: *Vick*, K.C., and *Fox-Andrews*; *Berryman*; *Edgedale*.

SOLICITORS: *F. J. Stewart*; *A. D. Vandamm & Co.*; *William Charles Crocker*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Mason *v.* Harry Parker, Ltd., and Another.

Stable, J. 9th May, 1940.

Illegal contract—Money paid by principal to agent to be employed for illegal purpose—Principal defrauded by agent—Money not used in accordance with principal's instructions—Action by principal—Whether maintainable.

Counter-claim tried by Stable, J.

The plaintiff by counter-claim, B. W. Mason, claimed from the defendants, Harry Parker and Harry Parker, Ltd., bookmakers, £11,850, as money had and received, alternatively damages for fraud. The sum in question was paid by way of a bet of £6,000 each way on a horse belonging to Mason for a race to be run at Nottingham. Mason alleged, and Stable, J., found, that Parker, or his company, received £6,000 from Mason on the representation that the defendant bookmakers would place that sum on Mason's horse for the race in question in small sums all over the country, in such a way that the starting price of the horse, which was not much fancied, should not be affected. In fact the horse failed to secure a place, and Mason, who at that time did not believe that he had been defrauded, accordingly paid the defendants a further £5,850 to meet his loss. STABLE, J., found that Parker fraudulently failed to place the £6,000 out in small amounts, as he had undertaken; that he had also fraudulently undertaken to bribe jockeys in order to secure that Mason's horse should win; and that Mason had believed and relied on both those representations of Parker. On those facts as found by the judge the question was argued whether Mason could recover the sum paid as money had and received, or damages for fraud. It was argued for the defendant, since he was bound by his lordship's finding on the matter, that the arrangement between the two men that jockeys should be bribed made it impossible for the plaintiff to maintain his action. The plaintiff, while conceding that neither party to an illegal contract can sue on it, argued that where money had been paid to an agent under a mandate to apply it in a particular way, and the agent, in fraud of his principal, failed to act accordingly, the principal could recover the money from the agent without setting up any illegal contract which might exist between them, relying simply on the legal obligation resting on the agent to return to his principal money not spent in accordance with the principal's instructions.

STABLE, J., said that counsel for the plaintiff had referred particularly to Salmond and Winfield's "Law of Contracts," at p. 152. The doctrine of the *locus pœnitentiæ* clearly could not apply to this case because the plaintiff had never repented of the transaction in the sense of countermanding the mandate. At p. 153 of the same volume it was stated that an exception to the rule *ex turpi causa non oritur actio* was where there existed between the parties the relationship of principal and agent, or trustee and beneficiary. That statement of the law, whether right or not, was not, in his (his lordship's) opinion, intended to refer to such a case as the present. If two principals were engaged in an illegal transaction and the agent of the one, the seller, received the purchase price from the other as buyer, then, when his principal claimed that money, the agent could not set up as a defence the illegality of the contract between the principals. That was because the principal's claim against the agent did not depend in any way on the contract between the principals. *Taylor* v. *Lendey* (1807), 9 East. 49, dealt with the *locus pœnitentiæ*. *Bone* v. *Ekless* (1860), 5 H. & N. 925, was a case where the illegality was in the contract between two principals. *Taylor* v. *Bowers* (1876), 1 Q.B.D. 291, was again distinguishable. Among the authorities relied on for the defendants was *Berg* v. *Sadler & Moore* [1937] 2 K.B. 158; 81 SOL. J. 158, which, while not exactly the present case, was a valuable guide. Applying what Lord Wright, M.R., said ([1937] 2 K.B., at p. 163), it was clear that, if the plaintiff must prove the exact circumstances in which he came to pay the defendant the money in question, the claim must fail. His lordship, having referred to *Parkinson* v. *College of Ambulance, Ltd.* [1925] 2 K.B. 1; 69 SOL. J. 107; and *Scott* v. *Brown, Doering, McNab & Co.* [1892] 2 Q.B. 724; 36 SOL. J. 688, as supporting his view, gave judgment for the defendants.

COUNSEL: *Miller*, K.C., *Morle* and *Ould*; *Beyfus*, K.C., and *Gallop*.

SOLICITORS: *Harold Eves*; *Liebermann, Leigh & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R. & A. Kohnstamm, Ltd. *v.* Ludwig Krumm (London), Ltd.

Macnaghten, J. 21st May, 1940.

Emergency legislation—Trading with the enemy—British guarantor of enemy's debt to British company—Enemy's default—Payment by guarantor not an offence—Trading with the Enemy Act, 1939 (2 & 3 *Geo. VI, c.* 89), *s.* 1 (2) (*a*) (*iii*).

Action on a guarantee.

The plaintiffs and the defendants were both limited companies formed under the Companies Acts. Most of the shares in the defendant company were held by a German company with whom the plaintiffs had had commercial dealings for a number of years. In 1936, German legislation having caused difficulties in trading between Great Britain and Germany, the plaintiffs were only willing to continue supplying goods to the German company if the defendant company would guarantee payment of all debts owing to the plaintiff company by the German company, and that was accordingly arranged by letters passing between the plaintiffs and the defendants. At the outbreak of war in September, 1939, a debt of £594 was owing by the German company to the plaintiffs, who now brought this action on the guarantee claiming that sum from the defendants, whose property became vested in the custodian under the Trading with the Enemy Act, 1939. By s. 1 of that Act "(1) Any person who trades with the enemy within the meaning of this Act shall be guilty of an offence of trading with the enemy . . . (2) . . . a person shall be deemed to have traded with the enemy . . . (*a*) if he has . . . (iii) . . . discharged any obligation of, an enemy, whether the obligation was undertaken before or after the commencement of this Act . . ."

MACNAGHTEN, J., said that the defendants argued that, under the Act of 1939, they would be committing an offence if they paid the money claimed in the action. It was argued that to pay a debt due from the German company to the plaintiffs would be discharging an obligation of the German company and would, accordingly, clearly come within the words of s. 1 (2) (*a*) (iii). On the other hand, it was conceded, it might seem unreasonable that the Act should prevent one English company from paying another what it had promised to pay. The second proviso to s. 1 (2) read: "Provided that a person shall not be deemed to have traded with the enemy by reason only that he has . . . (ii) received payment from an enemy of a sum of money due in respect of a transaction under which all obligations on the part of the person receiving payment had been performed before the commencement of the war by reason of which the person from whom the payment was received became an enemy." The plaintiffs would not be deemed to be trading with the enemy if they received payment of the debt from the German company directly. In those circumstances, s. 1 (2) (*a*) (iii) could not, in his opinion, apply to a case where an English company, having given a guarantee of a debt, performed their obligation under the guarantee. To hold that it did apply to such a case would lead to the absurd result that although a creditor might under the proviso receive payment from the enemy debtor he could not receive payment from a British subject who had guaranteed the enemy's debt. He (his lordship) thought that the words "discharged any obligation of an enemy" in s. 1 (2) (*a*) (iii) meant a complete discharge of the obligation and not a mere transfer of the debtor's obligation to pay from the creditor to the guarantor. The obligation of the enemy debtor had not in fact been discharged. It had still to be met. Proviso (ii) to s. 1 (2), therefore, precluded the defendants from relying on the Act, and there must be judgment for the plaintiffs for the sum claimed, with costs.

COUNSEL: *G. O. Slade* and *V. Wolff*; *Salmon*.

SOLICITORS: *Wordsworth, Marr Johnson & Shaw*; *Buckeridge and Braune*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Rules and Orders.

S.R. & O., 1940, No. 1224/L.15.

OATHS.

THE ARMED FORCES (ADMINISTRATION OF OATHS) ORDER, 1940, DATED July 10, 1940.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred on me by section 1 of the Evidence and Powers of Attorney Act, 1940,* and of all other powers enabling me in this behalf, do hereby make the following Order:—

1. *Power to certain officers in H.M.'s Forces to administer oaths.*]—(1) During the present war any officer of His Majesty's Naval, Military, or Air Forces who holds a rank not below that of Lieutenant-Commander,

* 3 & 4 Geo. 6, c. 28.

Major, or Squadron-Leader, or, being an officer of the staff of His Majesty's Judge Advocate General, holds a rank not below that of Captain or Flight-Lieutenant, shall have power, while serving within or without the United Kingdom, to administer oaths to, and take affidavits from, any person subject to the Naval Discipline Act, to military law, or to the Air Force Act.

(2) An officer empowered to administer an oath or take an affidavit by virtue of the powers conferred by this Order shall state, in the jurat or attestation to the document in respect of which the power is being exercised, the following matters only, that is to say—

(*a*) the date on which the oath or affidavit is taken or sworn;

(*b*) the full name and rank of the officer and, if he is an officer of the staff of the Judge Advocate General of the Forces, a statement of that fact.

2. *Citation and commencement.*]—This Order may be cited as the Armed Forces (Administration of Oaths) Order, 1940, and shall come into operation on the seventeenth day of July, 1940.

Dated the tenth day of July, 1940.

Simon, C.

S.R. & O., 1940, No. 1183/L.13.

SUPREME COURT, ENGLAND

PROCEDURE

THE RULES OF THE SUPREME COURT (AUGUST BANK HOLIDAY), 1940. DATED JULY 4, 1940.

War Legislation.

(*Supplementary List, in alphabetical order, to those published week by week in* THE SOLICITORS' JOURNAL, *from the 16th September, 1939, to the 13th July, 1940.*)

PROGRESS OF BILLS.

ROYAL ASSENT.

In addition to the list given in last week's issue, the following Bills also received the Royal Assent on the 10th July:—

Christchurch Corporation.
Gosport Water.
Monmouthshire and South Wales Employers' Mutual Indemnity Society Limited.
Wey Valley Water.
Taunton Corporation.
St. Mary Magdalene Hospital (Newcastle-upon-Tyne).

The following Bills received the Royal Assent on Wednesday, 17th July:—

Consolidated Fund (No. 2).
Colonial Development and Welfare.
Confirmation of Executors (War Service) (Scotland).
Law Reform (Miscellaneous Provisions) (Scotland).
Cardiff Corporation (Trolley Vehicles) Provisional Order.
Huddersfield Corporation (Trolley Vehicles) Provisional Order.
Newcastle-upon-Tyne (Trolley Vehicles) Provisional Order.

HOUSE OF LORDS.

Merchant Shipping (Salvage) Bill [H.C.].
Read Second Time. [16th July.

Newcastle-upon-Tyne and Gateshead Gas Bill [H.C.].
Read Third Time. [11th July.

Solicitors Bill [H.L.].
Read Third Time. [17th July.

Unemployment Insurance Bill [H.C.].
Read Second Time. [16th July.

HOUSE OF COMMONS.

Agriculture (Miscellaneous War Provisions) (No. 2) Bill [H.C.].
Read First Time. [17th July.

Emergency Powers (Defence) (No. 2) Bill [H.C.].
Read Second Time. [16th July.

South Eastern Gas Corporation Limited (Associated Companies) Bill [H.C.]
Read Third Time. [17th July.

Workmen's Compensation (Supplementary Allowances) Bill [H.C.].
Withdrawn. [11th July.

Workmen's Compensation (Supplementary Allowances) (No. 2) Bill [H.C.].
Read First Time. [11th July.

STATUTORY RULES AND ORDERS.

No. 1188. **Aliens** (French Nationality) (Revocation of Exemption) Order, July 7.

No. 1239. Aliens (Restrictions as to Employment) Order, July 10.

No. 1224/L.15. **Armed Forces** (Administration of Oaths) Order, July 10.

No. 1247. **Butter** (Maximum Prices) (No. 2) Order, 1940. Amendment, July 11.

No. 1206. **Civil Defence** (Employment) Order, July 9.

No. 1190. **Control of Communications** Order (No. 5). July 6.

No. 1197. **Cultivation of Lands** Order (No. 2), July 9.

No. 1191/S.53. **Defence** (Administration of Justice) Scotland Regulations, 1940. Order in Council, July 2.

No. 1212. Defence (Agriculture and Fisheries) Regulations, 1939. Order in Council, July 10, 1940, adding a new Regulation 24 and re-numbering the existing Regulation 24 as Regulation 25.

No. 1213. Defence (Companies) Regulations, 1940. Order in Council, July 10.

No. 1210. Defence (Encouragement of Exports) Regulations, 1940. Order in Council, July 10.

No. 1218. Defence (Finance) Regulations (Isle of Man), 1939. Order in Council, July 10, 1940, amending Regulation 3A.

No. 1216. Defence (General) Regulations, 1939. Order in Council, July 10, 1940, adding Regulation 84A.

No. 1217. Defence (General) Regulations, 1939. Order in Council, July 10, 1940, amending Regulations 18A, 24, 27, 61, 63, 66 and 72, and adding Regulations 23E, 42A, 58AA, 58AB and 62 BA.

No. 1215. Defence (General) Regulations, 1939. Order in Council, July 10, 1940, adding Regulations 1B and 38A.

No. 1211. Defence (Savings Banks) Regulations, 1939. Order in Council, July 10, adding Regulation 5.

No. 1214. Defence (Trading with the Enemy) Regulations.

No. 1174. **Emergency Powers** (Defence). The Defence (Cinematograph Quotas) Regulations, 1940. Order in Council dated July 2.

No. 1177. Emergency Powers (Defence). The Sulphate of Ammonia (Charges) (No. 1) Order, July 4.

No. 1192. **Evidence.** Postal Packets. Order in Council, July 2, 1940, under the Evidence and Powers of Attorney Act, 1940, specifying the Persons who are Competent Officers for the purpose of signing Certificates.

No. 1200. **Export of Goods** (Control) (No. 25) Order, July 10.

No. 1196. Export of Goods (Control) (No. 24) Order, July 9.

No. 1240. **Mines and Coal** (Records and Information) Order, July 10.

No. 1221. **Specified Classes of Persons** (Registration) (No. 1) Order, July 8.

No. 1183/L.13. **Supreme Court** Rules (August Bank Holiday), July 4.

No. 1139. **Trading with the Enemy** (Specified Areas) Order, July 10.

No. 1219. Trading with the Enemy (Specified Persons) (Amendment) (No. 8) Order, July 5.

No. 1199. **Transfer of Securities** to Enemy Subjects Order, July 9, 1940, revoking the Licence dated October 30, 1939.

No. 1222. **Unemployment Insurance** (Banking Industry Special Scheme) (Amendment) Order, June 27.

No. 1223. Unemployment Insurance (Emergency Powers) (Amendment) (No. 2) Regulations, July 5.

No. 1235. Unemployment Insurance (Insurance Industry Special Scheme) (Amendment) Order, June 27.

Copies of the above Bills, S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Societies.

Solicitors' Benevolent Association.

The monthly meeting of the directors was held at 60, Carey Street, Chancery Lane, W.C.2, on Wednesday, the 3rd July. Mr. Henry White, M.A. (Winchester), was in the chair, and the following directors were present: Mr. Gerald Keith, O.B.E. (Vice-Chairman), Mr. G. L. Addison, Mr. P. D. Botterell, Miss Mary Brown (Grimsby), Mr. W. Sefton Clarke, M.A. (Bristol), Sir Edmund Cook, C.B.E., LL.D., Mr. T. G. Cowan, Mr. C. H. Culross, Mr. P. Stormonth Darling, Mr. A. F. King-Stephens, Mr. R. C. Nesbitt and Mr. Gerald Russell.

A report was received from the Public Trustee showing that the Association had already received £33,141 13s. 4d. from Lord Riddell's Trust, and that other sums would follow, which the Chairman said might be estimated to make a total of £50,000.

The directors further considered the Swann Trust of £97,000 which was administered by the Association, and discussed the future administration of the trust, and Mr. Sefton Clarke, director at Bristol, gave the board the opinions of the Bristol members thereon.

The sum of £1,926 7s. 7d. was distributed in grants to necessitous cases, and five new members were admitted.

All solicitors in England and Wales are earnestly asked to support this Association—the benevolent fund of their own profession—(minimum annual subscription £1 1s.; life membership £10 10s.). Cheques should be made payable to the Solicitors' Benevolent Association and sent to the Secretary at the offices of the Association, Clifford's Inn, E.C.4.

Legal Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. FRANK KINGSLEY GRIFFITH, M.P., to be the Judge of the County Courts on Circuit No. 16 (Hull, etc.) in the place of the late Judge Sir Reginald Mitchell Banks, K.C. Mr. Griffith was called to the Bar by the Inner Temple in 1915, and is Recorder of Richmond, Yorks. The appointment creates a Parliamentary vacancy in West Middlesbrough for which Mr. Griffith has sat as a Liberal since 1928.

The following appointments, promotions, transfers and re-appointments have been made in the Colonial Legal Service :—

C. E. PURCHASE, LL.B., to be Assistant Administrator General and Deputy Official Receiver, Uganda ; R. H. BROWNE, Chief Registrar, Nigeria, to be Solicitor General, Gold Coast ; and E. HALLINAN, Crown Counsel, Nigeria, to be Attorney-General, Bahamas.

Notes.

The next Quarter Sessions of the Peace for the Borough of Stamford will be held at the Town Hall, Stamford, on Wednesday, 31st July, at 11.30 a.m.

The next Quarter Sessions of the Peace for the Borough of Wolverhampton will be held at the Sessions Court, Town Hall, North Street, Wolverhampton, on Friday, 2nd August, at 10 a.m.

Following the decision reached by the Judges of the Supreme Court, the Judges of the Court of Session, Edinburgh, have decided to cancel the long vacation due to begin on Saturday and to sit throughout until the winter session opens on 8th October.

Mr. Justice Morton, in the Chancery Division on Wednesday, said that an announcement would be made later as to which judges would be sitting during August and September. He himself would be engaged on war duties during August, but he might be sitting some time in September.

The Ministry of Aircraft Production announces that Mr. Raymond Needham, K.C., has retired from the Bar on his appointment to take charge of priority matters at the Ministry of Aircraft Production. Mr. Needham was called to the Bar by the Middle Temple in 1908. He is also a member of the Inner Temple, and took silk in 1928.

From 1st August until the commencement of the Michaelmas Sittings, 1940, one judge of the Chancery Division will be sitting in London, daily if necessary, to dispose of all classes of Chancery business usually disposed of by a judge. Cases already in the lists for hearing or which may hereafter come into the lists, will be heard in the order in which they appear in such lists. If any party to a cause now in the lists or which may come into the lists in August or September does not wish it to be heard until the Michaelmas Sittings he must apply to Mr. Justice Bennett for the cause to stand out. An announcement will be made later of the days on which particular classes of business will be taken.

Wills and Bequests.

Mr. Arthur Horace Bird, solicitor, of Chislehurst, and of Bedford Row, W.C., left £50,295, with net personalty £40,715.

Mr. George Montagu Brown-Westhead, barrister-at-law, of Leamington Spa, left £110,279, with net personalty £74,313.

Alderman John Milton Leigh Criddle, J.P., of Jesmond, solicitor, left £82,245, with net personalty £77,452. He left £100 to the Royal Victoria Infirmary, for Sick and Lame Poor, for Northumberland and Durham ; £100 to the Northern Counties Orphanage, Newcastle ; and £100 to Newcastle Grammar School, for a prize for classics.

Mr. Henry Edward Donner, of Scarborough, solicitor, left £23,031, with net personalty nil.

Mr. Henry Hughes, solicitor, of Shortlands, left £40,054, with net personalty £30,866. He left £100 each to Beckenham Hospital, Bromley and District Hospital, and Phillips Memorial Hospital, Bromley.

Mr. Robert Innes, J.P., solicitor, of Stalybridge, left £172,935 (net personalty £122,566). He left £500 to The Law Society, if not given in his lifetime, for an annual prize, and £500 to the Solicitors' Benevolent Association.

Mr. Charles Gibbons May, solicitor, of Lincoln's Inn Fields, W.C., and of Woking, left £20,443, with net personalty £17,718.

Mr. Thomas Ottaway, solicitor, of St. Albans, left £20,439, with net personalty £9,823.

CORRECTION.

In the article entitled "Water Mains under Building Land," which appeared in our issue of the 6th July, it was stated that sub-s. (3) of s. 25 of the Public Health Act, 1936, provides that "if *after* the commencement of the Act . . ." This should have read "if *before* the commencement of this Act." We are grateful to a subscriber for pointing out this error, which occurred in the typing of the manuscript.

Court Papers.

SUPREME COURT OF JUDICATURE.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. I.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
July 22	Andrews	Jones	More
,, 23	Jones	Ritchie	Reader
,, 24	Ritchie	Blaker	Andrews
,, 25	Blaker	More	Jones
,, 26	More	Reader	Ritchie
,, 27	Reader	Andrews	Blaker

	GROUP A.		GROUP B.	
	MR. JUSTICE BENNETT. Non-Witness.	MR. JUSTICE SIMONDS. Witness.	MR. JUSTICE CROSSMAN. Non-Witness.	MR. JUSTICE MORTON. Witness.
	Mr.	Mr.	Mr.	Mr.
July 22	Ritchie	Andrews	Reader	Blaker
,, 23	Blaker	Jones	Andrews	More
,, 24	More	Ritchie	Jones	Reader
,, 25	Reader	Blaker	Ritchie	Andrews
,, 26	Andrews	More	Blaker	Jones
,, 27	Jones	Reader	More	Ritchie

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October, 1939) 2%. Next London Stock Exchange Settlement, Thursday, 25th July, 1940.

	Div. Months.	Middle Price 17 July 1940.	Flat Interest Yield.	‡ Approximate Yield with redemption.
ENGLISH GOVERNMENT SECURITIES.			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	107½	3 14 5	3 8 3
Consols 2½%	JAJO	72⅝	3 9 3	—
War Loan 3½% 1955–59	AO	100½	2 19 10	2 19 7
War Loan 3½% 1952 or after	JD	99⅛	3 10 6	—
Funding 4% Loan 1960–90	MN	110½	3 12 5	3 5 6
Funding 3% Loan 1959–69	AO	96⅜	3 2 0	3 3 5
Funding 2½% Loan 1952–57	JD	95½	2 17 7	3 2 0
Funding 2½% Loan 1956–61	AO	90	2 15 7	3 3 2
Victory 4% Loan Average life 21 years	MS	109½	3 13 3	3 7 6
Conversion 5% Loan 1944–64	MN	108¼	4 12 2	2 8 10
Conversion 3½% Loan 1961 or after	AO	99⅝	3 10 2	—
Conversion 3% Loan 1948–53	MS	101	2 19 5	2 16 10
Conversion 2½% Loan 1944–49	AO	98½	2 10 9	2 14 0
National Defence Loan 3% 1954–58	JJ	99½	3 0 4	3 0 9
Local Loans 3% Stock 1912 or after	JAJO	85½	3 10 4	—
Bank Stock	AO	325	3 13 10	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	85	3 10 7	—
India 4½% 1950–55	MN	108	4 3 4	3 10 9
India 3½% 1931 or after	JAJO	92½	3 15 8	—
India 3% 1948 or after	JAJO	80	3 15 0	—
Sudan 4½% 1939–73 Average life 27 years	FA	107	4 4 1	4 1 3
Sudan 4% 1974 Red. in part after 1950	MN	105	3 16 2	3 8 1
Tanganyika 4% Guaranteed 1951–71	FA	105	3 16 2	3 8 11
Lon. Elec. T. F. Corpn. 2½% 1950–55	FA	89	2 16 2	3 8 0
COLONIAL SECURITIES.				
*Australia (Commonwealth) 4% 1955–70	JJ	100	4 0 0	4 0 0
Australia (Commonwealth) 3½% 1964–74	JJ	88	3 13 10	3 17 10
Australia (Commonwealth) 3% 1955–58	AO	86½	3 9 4	4 1 6
*Canada 4% 1953–58	MS	109½	3 13 1	3 2 0
New South Wales 3½% 1930–50	JJ	95	3 13 8	4 2 11
New Zealand 3% 1945	AO	94½	3 3 6	4 7 10
Nigeria 4% 1963	AO	104	3 16 11	3 14 9
Queensland 3½% 1950–70	JJ	93½	3 14 10	3 17 6
*South Africa 3½% 1953–73	JD	97½	3 11 10	3 12 7
Victoria 3½% 1929–49	AO	96	3 12 11	4 0 10
CORPORATION STOCKS.				
Birmingham 3% 1947 or after	JJ	79½	3 15 6	—
Croydon 3% 1940–60	AO	91½	3 5 7	3 12 1
Leeds 3½% 1958–62	JJ	94	3 9 2	3 13 1
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	92	3 16 1	—
London County 3% Consolidated Stock after 1920 at option of Corporation	MJSD	79	3 15 11	—
*London County 3½% 1954–59	FA	99	3 10 8	3 11 5
Manchester 3% 1941 or after	FA	79½	3 15 6	—
Manchester 3% 1958–63	AO	91½	3 5 7	3 10 10
Metropolitan Consolidated 2½% 1920–49	MJSD	96½	2 11 10	2 18 1
Met. Water Board 3% "A" 1963–2003	AO	82½	3 12 9	3 14 5
Do. do. 3% "B" 1934–2003	MS	84½	3 11 0	3 12 7
Do. do. 3% "E" 1953–73	JJ	88	3 8 2	3 12 7
Middlesex County Council 3% 1961–66	MS	92	3 5 3	3 9 5
*Middlesex County Council 4½% 1950–70	MN	105½	4 5 4	3 15 11
Nottingham 3% Irredeemable	MN	80	3 15 0	—
Sheffield Corporation 3½% 1968	JJ	97½	3 11 10	3 12 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS.				
Great Western Rly. 4% Debenture	JJ	100	4 0 0	—
Great Western Rly. 4½% Debenture	JJ	105½	4 5 4	—
Great Western Rly. 5% Debenture	JJ	111½	4 9 8	—
Great Western Rly. 5% Rent Charge	FA	106½	4 13 11	—
Great Western Rly. 5% Cons. Guaranteed	MA	102½	4 17 7	—
Great Western Rly. 5% Preference	MA	73	6 16 11	—

* Not available to Trustees over par.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date ; in the case of other Stocks, as at the latest date.